

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 18-cv-5587</b>
	)	
<b>v.</b>	)	<b>Hon. John Z. Lee</b>
	)	
<b>EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,</b>	)	<b>Mag. Judge Young B. Kim</b>
	)	
<b>Defendants.</b>	)	
	)	

**NOTICE OF LATE CLAIM  
AND RECEIVER'S POSITION**

Kevin B. Duff, as receiver ("Receiver") for the Estate of Defendants EquityBuild, Inc. ("EquityBuild"), EquityBuild Finance, LLC ("EquityBuild Finance"), their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the "Receivership Defendants"), provides this Notice of Late Claim and His Position Regarding Late Claim.

1. On May 1, 2019, the Court granted the Receiver's motion to approve a claims process and claim form. (Dkt. 349)

2. In accordance with the claims process approved by the Court, the Receiver engaged Axios to set up a claims portal for claims submission.

3. The Court set an amended claims bar order date of December 31, 2019. (Dkt. 574)

4. The Receiver's claims process motions and the Court's claims process orders are available on the Court's ECF system, are and have at all relevant times been posted on the Receiver's web page for this receivership (<http://www.rdaplaw.net/receivership-for-equitybuild>), and have been the subject of numerous status reports court and hearings. (*E.g.*, Dkt. 468, 477, 548, 940, 941, 973)

5. Notice of the claims process, claims form, and claims portal were provided to all known claimants by no later than December 2019. In addition, consistently since 2019, the Receiver's web page has stated – at nearly the top of the page – the following or words to this effect:

**FINAL DEADLINE FOR SUBMITTING CLAIMS AND AMENDED CLAIMS: December 31, 2019**

On November 5, 2019, the Honorable John Z. Lee of the United States District Court for the Northern District of Illinois ordered that all claims and amended claims must be submitted to the Receiver no later than December 31, 2019. All claims or amendments to claims received by the Receiver after December 31, 2019 will be presumptively barred as untimely and will not be allowed without prior court approval.

All claims and amended claims must use the claims form approved by the Court.

For a copy of the Notice and General Background & Instructions, and Proof of Claim Form, please [click here](#).

For questions relating to the claims process, please send an email to [equitybuildclaims@rdaplaw.net](mailto:equitybuildclaims@rdaplaw.net).

6. The “click here” link shown above takes the user to the Court-approved claims submission instructions and Proof of Claim Form. Those instructions provide the following:

a. The following statement on page 1:

**PLEASE TAKE NOTICE** that the Honorable Young B. Kim of the United States District Court for the Northern District of Illinois (the “Court”) has entered an order establishing deadlines by which all proofs of claim by any individual or entity who purports to be owed money by, or otherwise entitled to relief against, EquityBuild, Inc. (“EquityBuild”), EquityBuild Finance, LLC (“EquityBuild Finance”), or any of their affiliates, or the affiliate entities of Jerome Cohen and Shaun Cohen. Pursuant to this order, you have until **December 31, 2019** to submit a completed proof of claim.

b. The following language in bold type on page 2 (with bold in original):

**To be eligible for any distribution, you MUST do EACH of the following, even if you have previously submitted correspondence and/or documents to the Receiver, to a lawyer, to a government agency, or to law enforcement officials:**

- 1. Complete and submit the proof of claim form to the Receiver by December 31, 2019.**
- 2. Submit documentation or other evidence to the Receiver to substantiate the basis for all amounts that you believe are due and owing to you by any of the Receivership Defendants.**
- 3. Attest under oath to verify the authenticity and accuracy of the documentation and information submitted with, or otherwise provided to the Receiver in support of, your proof of claim form.**

c. The following statement on page 3 (with bold in original):

## **1. WHO MUST FILE A PROOF OF CLAIM**

Any persons or entities seeking a distribution from the Receivership Estate in connection with any claim arising between January 1, 2010 and August 17, 2018 must complete and submit a proof of claim on or before **December 31, 2019**.

d. The following statement on page 5 (with bold and capitalized lettering in original):

## **2. WHEN AND WHERE TO FILE**

Claimants can send via U.S. Mail or e-mail to the following address:

Kevin B. Duff, Receiver  
EquityBuild, Inc., et al.  
c/o Rachlis Duff & Peel, LLC  
542 S. Dearborn Street, Suite 900  
Chicago, IL 60605  
equitybuildclaims@rdaplaw.net

**THIS NOTICE APPLIES TO EVERY CLAIM AGAINST EQUITYBUILD, EQUITYBUILD FINANCE, ANY OF THEIR AFFILIATES, OR THE AFFILIATE ENTITIES OF JEROME COHEN AND SHAUN COHEN, OR ANY OTHER RECEIVERSHIP DEFENDANT. IF YOU FAIL TO SUBMIT A PROOF OF CLAIM, YOUR CLAIM MAY BE FOREVER BARRED. YOU MAY WISH TO CONSULT WITH YOUR OWN ATTORNEY. YOU BEAR SOLE RESPONSIBILITY FOR CORRECTLY AND TIMELY COMPLETING AND SUBMITTING YOUR PROOF(S) OF CLAIM.**

7. Among the Receiver's filings, there have been numerous submissions that set forth the identity of all claimants on each property. All such filings identifying claimants on a property-by-property basis are available on the Court's ECF system and are and have at all relevant times been posted on the Receiver's web page for this receivership.

8. Because the Receiver had not received a claim submission from Joseph and Linda Martinez ("Martinez"), the Receiver did not list Martinez in any disclosure of the claimants who made claims against each property at any time prior to August 1, 2022.

9. The Receiver received a late claim submission from Martinez by mail on July 1, 2022 (supporting documents) and July 19, 2022 (proof of claim form) against three properties, including two from Group 1.

10. The Receiver informed Martinez that claims were due December 31, 2019. Martinez received notice of the claims process in 2019 both by mail (June 2019)

and email (May 23, June 13, June 24, and November 12, 2019). In a letter to the Receiver dated 6/28/2022, Martinez stated:

“Enclosed is the documentation I have for EquityBuild that my wife and I, Linda and Joseph Martinez, invested \$360,000.00. It was the largest part of our retirement. [¶] In early 2019, we submitted the same documentation online. I believe your office calls it Axos. I know nothing about receiving a confirmation number. I assumed we did what we were supposed to do. We also assumed the RDAP had a list of our investment since you seized all records and had a list of investors in those records. Also, I have a recollection that I sent an email to RDAP asking if you received my claim for which I received no communication. I also made phone calls and left messages. ...”

11. The Receiver never previously received a claim or supporting documentation from Martinez. Nor does the Receiver have any record of having received the alluded to emails or phone calls. From a review of Axos portal records, it is the Receiver’s understanding that Martinez accessed the Axos claims portal in June 2019 but never submitted a claim.

12. The email address provided by Martinez for email communications has been on the Receiver’s email service list since at least 9/21/2018. The Receiver sent email communications to Martinez using Martinez’s email address from the Receiver’s claims email address (*i.e.*, equitybuildclaims@rdaplawn.net) on 5/23/2019, 6/13/2019, 6/24/2019, 11/12/2019, 2/9/2021, and 2/16/2021, each of which specifically addressed the claims process and related deadlines. In addition, the Receiver sent email communications to Martinez using Martinez’s email address from the Receiver’s primary email address (*i.e.*, equitybuildreceiver@rdaplawn.net) on at least 56 other occasions, each of which provided or addressed sundry pleadings, status

reports, deadlines, and other matters relating to the receivership and proceedings before the Court.

13. Joseph and Linda Martinez have now asserted late claims against the following properties in Group 1:

- a. \$50,000 claim against 3074 E Cheltenham Place (Property No. 74), and
- b. \$50,000 claim against 7750-58 S Muskegon Avenue (Property No. 78).

14. Additionally, Joseph and Linda Martinez assert a claim against the property located at 8100 S Essex Avenue (Property No. 9) in the amount of \$260,000.

15. A copy of this Notice of Late Claims and Receiver's Position will be served on Joseph and Linda Martinez by email and U.S. Mail using the contact information provided by them in their claim form.

#### **Receiver's Recommendation**

16. The Receiver's recommendation is to,

- a. deny Martinez's claim as to the Group 1 properties (*i.e.*, 3074 Cheltenham and 7750 Muskegon) on the basis that:

- (1) Martinez received fair and adequate notice of the claims process and the need to submit a timely claim;
- (2) Martinez received fair and adequate notice that the Group 1 properties, including 3074 Cheltenham and 7750 Muskegon, were the first properties before the Court as part of the dispute claims process and that all interested parties had an obligation to serve responses to standard written discovery (which

Martinez did not do) and an opportunity to conduct discovery and submit position statements with respect to the Group 1 properties (which Martinez also did not do) (*see, e.g.*, Dkt. 638, 720, 807, 836, 879, 938, 940, 941, 1001, 1004, 1006, 1091, 1118, 1143, 1168, 1195, 1201, 1211);

- (3) Martinez received fair and adequate notice that the Receiver had not received a claim from him with respect to the Group 1 properties (*i.e.*, 3074 Cheltenham and 7750 Muskegon), including because none of the Receiver's numerous reports on claims identified Martinez as a claimant on those properties and Martinez was not listed as a Group 1 claimant;
- (4) the claim was untimely because the amended deadline to submit claims to the Receiver was December 31, 2019 but Martinez did not submit a completed claim form to the Receiver until July 19, 2022, which was after the process for Group 1 had been completed (with the exception only of the Court's ruling on Group 1 claims); and
- (5) other participants in the Group 1 claims process were deprived of notice of Martinez's claim and the opportunity to receive and review the claim submission or standard discovery responses from Martinez, conduct discovery as to Martinez, receive and respond to a position statement from Martinez, or address

whether Martinez's claim should be disallowed as late or on any other basis; and

- b. reserve any objection that the Receiver or other claimants may have with respect to Martinez's claim against 8100 Essex until that property and its claims are before the Court for resolution.

Dated: August 24, 2022

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis  
Michael Rachlis  
Jodi Rosen Wine  
Rachlis Duff & Peel LLC  
542 South Dearborn Street, Suite 900  
Chicago, IL 60605  
Phone (312) 733-3950  
[mrachlis@rdaplawnet.net](mailto:mrachlis@rdaplawnet.net)  
[jwine@rdaplawnet.net](mailto:jwine@rdaplawnet.net)



**CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2022, I electronically filed the foregoing Notice with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. A copy of the foregoing was served upon counsel of record via the CM/ECF system.

I further certify that I caused a true and correct copy of the foregoing to be served upon all known EquityBuild investors and all known individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form).

I further certify that I caused a true and correct copy of the foregoing Notice, to be served on Joseph and Linda Martinez by email and U.S. Mail using the contact information provided by them in their claim form.

I further certify that the Notice will be posted to the Receivership webpage at: <http://rdaplaw.net/receivership-for-equitybuild>

/s/ Michael Rachlis  
Rachlis Duff & Peel, LLC  
542 South Dearborn Street, Suite 900  
Chicago, IL 60605  
Phone (312) 733-3950  
Fax (312) 733-3952  
mrachlis@rdaplaw.net